

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
John Georgallas Banana Distributor of New York, Inc. :
for Redetermination of a Deficiency or Revision of :
a Determination or Refund of Corporation Franchise :
Tax under Article 9A of the Tax Law for the Fiscal :
Year Ended 10/31/78. :
:

AFFIDAVIT OF MAILING

State of New York }

ss.:

County of Albany }

David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 9th day of November, 1984, he served the within notice of Decision by certified mail upon John Georgallas Banana Distributor of New York, Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

John Georgallas Banana Distributor of New York, Inc.
750 Drake St.
Bronx, NY 10474

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this
9th day of November, 1984.

David Parchuck

James A. Blum
Authorized to administer oaths
pursuant to Tax Law section 174

STATE TAX COMMISSION

AFFIDAVIT OF MAILING

Edward P. [Signature]
Authorized to administer oaths
pursuant to Tax Law section 174

STATE OF NEW YORK
STATE TAX COMMISSION
ALBANY, NEW YORK 12227

November 9, 1984

John Georgallas Banana Distributor of New York, Inc.
750 Drake St.
Bronx, NY 10474

Gentlemen:

Please take notice of the Decision of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 1090 of the Tax Law, a proceeding in court to review an adverse decision by the State Tax Commission may be instituted only under Article 78 of the Civil Practice Law and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within 4 months from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to:

NYS Dept. Taxation and Finance
Law Bureau - Litigation Unit
Building #9, State Campus
Albany, New York 12227
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Hyman Karlinsky
Hyman Karlinsky, C.P.A.
170 Broadway
New York, NY 10038
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
JOHN GEORGALLAS BANANA DISTRIBUTORS	:	DECISION
OF NEW YORK, INC.	:	
	:	
for Redetermination of a Deficiency or for	:	
Refund of Corporation Franchise Tax under	:	
Article 9-A of the Tax Law for the Fiscal	:	
Year Ending October 31, 1978.	:	

Petitioner, John Georgallas Banana Distributors of New York, Inc., 750 Drake Street, Bronx, New York 10474, filed a petition for refund of corporation franchise tax under Article 9-A of the Tax Law for the fiscal year ending October 31, 1978 (File No. 36009).

A formal hearing was held before Daniel J. Ranalli, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on April 23, 1984 at 1:15 P.M., with all briefs to be submitted by June 23, 1984. Petitioner appeared by Hyman Karlinsky, C.P.A. The Audit Division appeared by John P. Dugan, Esq. (Paul LeFebvre, Esq., of counsel).

ISSUES

I. Whether the storage of bananas in atmospherically controlled rooms for ripening may be considered "processing" for purposes of determining whether petitioner was entitled to investment tax credits on the purchase of various equipment used in its business.

II. If so, which of the items on which petitioner claimed investment tax credits were used by petitioner for the storage of bananas in atmospherically controlled rooms.

FINDINGS OF FACT

1. Petitioner, John Georgallas Banana Distributors of New York, Inc., filed a New York State Corporation Franchise Tax Report for the fiscal year ending October 31, 1978. On its return, petitioner claimed an investment tax credit of \$3,183.33 for refrigeration equipment.

2. On October 22, 1981, the Audit Division issued a Notice of Deficiency against petitioner in the amount of \$8,759.00 plus interest of \$2,246.69 for a total due of \$11,005.69 for the fiscal year ending October 31, 1978. A Statement of Audit Adjustment issued August 10, 1981 explained, in part, that "You indicated on your franchise tax report that your principal business activity is the wholesaling of bananas. The property claimed for the Investment Tax Credit of \$3,759.22 was disallowed since it was not used in the production of goods by manufacturing."¹

3. Petitioner is a banana importer and distributor located in the Bronx, New York. When petitioner receives bananas from refrigerated ships, they are still in an unripened dark green state. When the bananas are distributed to supermarkets and stores they must be light green in color. If the bananas begin turning yellow or brown before distribution to the retailers, they become unsalable and must be disposed of or sold as pig fodder. In order to insure that the bananas do not ripen too rapidly, they must be placed in special rooms where the temperature and humidity can be strictly controlled. The ripening process can be either speeded up or slowed down, depending on the number of days the fruit will be in storage, by adjusting the temperature and humidity.

¹ The deficiency also included the disallowance of investment tax credits of \$575.89 claimed for a trailer and trucks and an erroneous refund of \$5,466.51 none of which is at issue herein.

4. Petitioner had a special seven room storage building erected for storing bananas. The equipment claimed for investment tax credit purposes included the following items used in the storage building: a forklift, lumber, installation of blowers, refrigeration equipment, refrigeration installation, plastic rivets, hardware supplies, concrete, insulation, door hardware and several minor miscellaneous items. Petitioner maintains that the atmospherically controlled storage building is used in the processing of the bananas and that it is entitled to the investment tax credit for the aforesaid items.

CONCLUSIONS OF LAW

A. That section 210.12(b) of the Tax Law provides that a corporation subject to taxation under Article 9-A of the Tax Law is entitled to an investment tax credit with respect to tangible personal property which is depreciable pursuant to section 167 of the Internal Revenue Code, has a useful life of four years or longer, is acquired by purchase as defined in section 167 of the Internal Revenue Code, has a situs in New York and is "principally used by the taxpayer in the production of goods by manufacturing, processing, assembling,...".

B. That processing is an operation whereby raw material is subjected to some special treatment, by artificial or natural means, which transforms or alters its form, state or condition. (Matter of Continental Terminals, Inc., State Tax Commission, March 5, 1982). The atmospherically controlled storage of bananas does not constitute processing since the end result of the controlled storage is not a product so significantly different from the raw material that such storage may be deemed "processing" (see Matter of Hudson Cold Storage & Freezer Corp., State Tax Commission, September 9, 1983;

Matter of J.H. Wattles, Inc., State Tax Commission, October 30, 1981).

Petitioner, therefore, was not entitled to an investment tax credit for its storage building.

C. In view of Conclusion of Law "B", it is unnecessary to decide whether all of the equipment on which petitioner claimed investment tax credits was used by petitioner for the storage of bananas in its special storage building.

D. That the petition of John Georgallas Banana Distributors of New York, Inc. is denied and the Notice of Deficiency issued October 22, 1981 is sustained.

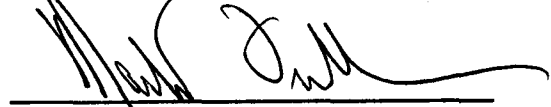
DATED: Albany, New York

STATE TAX COMMISSION

NOV 09 1984


PRESIDENT


COMMISSIONER


COMMISSIONER